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Attorneys for Defendant, Teck Metals Ltd.

(See attached for Counsel for Plaintiffs
and Plaintiff-Intervenor)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT YAKIMA

JOSEPH A. PAKOOTAS, an individual
and enrolled member of the Confederated
Tribes of the Colville Reservation; and
DONALD L. MICHEL, an individual and
enrolled member of the Confederated
Tribes of the Colville Reservation, and
the CONFEDERATED TRIBES OF
THE COLVILLE RESERVATION,

Plaintiffs,

And

STATE OF WASHINGTON

Plaintiff-Intervenor,

v.

TECK COMINCO METALS, LTD., a
Canadian corporation,

Defendant.

No. CV-04-0256-LRS

STIPULATION AND PROTECTIVE
ORDER

STIPULATION AND
PROTECTIVE ORDER

1 Plaintiffs Joseph A. Pakootas, Donald R. Michel, and the Confederated Tribes
 2 of the Colville Reservation (the “Tribes”), Plaintiff and Counterclaim Defendant State
 3 of Washington (the “State”) (collectively, “Plaintiffs”), and Defendant and Counter-
 4 Claimant Teck Metals Ltd. (“Defendant” or “Teck”)) (collectively, the Parties”),
 5 together submit this proposed, stipulated Protective Order (“Protective Order”) for
 6 consideration and entry by the Court.

7 Recitals

8 WHEREAS, Rule 502(d) of the Federal Rules of Evidence provides:

9 A federal court order that the attorney-client privilege or
 10 work product protection is not waived as a result of
 11 disclosure in connection with the litigation pending before
 12 the court governs all persons or entities in all state or federal
 13 proceedings, whether or not they were parties to the matter
 before the court, if the order incorporates the agreement of
 the parties before the court.

14 WHEREAS, Rule 502(e) of the Federal Rules of Evidence provides that “[a]n
 15 agreement upon the effect of disclosure in a Federal proceeding is binding only on the
 16 parties to the agreement, unless it is incorporated into a court order.”

17 WHEREAS, the Parties seek to cooperate in their discovery efforts and hope to
 18 reduce the costs and burdens of discovery by ensuring that privileges and protections
 19 against disclosure are not subject to any inadvertent, unintentional, unknowing or
 20 expansive waivers in this or any other jurisdiction, to the full extent permitted by law,
 21 and regardless of whether the relevant efforts to avoid waiver, if any, are deemed
 22 reasonable or unreasonable by non-parties.

23 WHEREAS, to facilitate cost-effective discovery in this matter, the Parties wish
 24 to exchange information related to their discovery efforts that is protected by the
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1 attorney-client privilege, the attorney work-product doctrine and other protections
2 against disclosure (“Privileged Discovery Information”).

3 WHEREAS, the parties will not disclose the Privileged Discovery Information
4 unless they can prevent this limited disclosure from resulting in an expanded waiver
5 of privilege or other protections, including any type of subject-matter waiver, as to
6 other information or documents relating to discovery.

7 NOW, THEREFORE, the Parties have agreed that they each may disclose
8 certain Privileged Discovery Information pursuant to this Protective Order according
9 to the following terms and conditions:

10 EXCHANGE OF DISCOVERY DECLARATIONS

11 1. In lieu of oral depositions under Rule 30(b)(6) of the Federal Rules of
12 Civil Procedure, the parties may elect to exchange written declarations describing
13 their discovery efforts; in particular, the collection, processing and production of
14 electronically stored information and hard copy documents (“Discovery
15 Declarations”).

16 2. Discovery Declarations may disclose Privileged Discovery Information
17 without waiving any other privileges or protections against disclosure (including work
18 product) that apply any other information or documents whatsoever.

19 3. No Discovery Declaration may be used in this or any other proceeding to
20 evidence the waiver of any privilege or protection against disclosure (including work-
21 product).

22 4. No Discovery Declaration may be used in this or any other proceeding to
23 compel the production of materials otherwise protected from disclosure by any
24 privilege or protection.

1 5. No Discovery Declaration may be used in this or any other proceeding to
2 compel the testimony of anyone who signs a Discovery Declaration.

3 6. Nothing in this Protective Order shall prevent a Party from evidencing
4 waiver of a privilege or protection against disclosure (including work-product) on
5 grounds other than the contents of a Discovery Deposition.

6 7. Nothing in this Protective Order shall constitute: (a) an agreement by any
7 party to produce any documents or other materials in discovery not otherwise agreed
8 upon or required by court order or the Federal Rules of Civil Procedure; (b) a waiver
9 by any person or party of any right to object to or seek a further protective order with
10 respect to any discovery in this or any other action; or (c) a waiver of any claim of
11 immunity or privilege with respect to any testimony, document or information.

12 8. The Parties expressly acknowledge that, by entering into this stipulated
13 Protective Order, they do not waive any claims or defenses.

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**STIPULATION AND
PROTECTIVE ORDER**

SO ORDERED as of the date of execution.
DATED this 20th day of April, 2010.

s/Lonny R. Suko

Lonny R. Suko
Chief United States District Court Judge

SO STIPULATED as of the date of execution.
Dated this 19th day of April 2010.

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STIPULATION AND PROTECTIVE ORDER

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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of April 2009, I filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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